

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

D.H. PIERCE DESIGN ASSOCIATES, INC.,
d/b/a PIERCE ARCHITECTS,
Plaintiff,

V.

DOCKET NO: 05-11626 RWZ

D.L. COTE & COMPANY, LLC, and DEE L. COTE, in his Individual Capacity,
Defendants.

PLAINTIFF'S STATUS REPORT

Pursuant to the Order of this Court dated November 3, 2005, the plaintiff, D.H. PIERCE DESIGN ASSOCIATES, INC., d/b/a PIERCE ARCHITECTS (“Pierce”) hereby provides the Court with a report regarding the status of this action:

1. As reported to the Court on November 2, 2005, the parties to this action, have entered into a written settlement agreement. Under that agreement, settlement was contingent upon certain events occurring. Specifically, the settlement agreement called for payment to Pierce of an agreed sum by or on behalf of the defendants either:

- (a) upon the refinancing of a particular piece of property or, in the event such refinancing does not occur, or
- (b) upon the sale of the first three condominium units at the property.

2. The defendants have executed a note and recorded a mortgage in favor of Pierce on the property for the agreed-upon amount.

3. Counsel for the defendants has also advised counsel for Pierce that an agreement for refinancing the property was reached, but has further stated that this agreement would not permit payment to Pierce as called for by the settlement agreement.

4. Counsel for Pierce has requested, both by telephone and in writing, a status on the refinancing from counsel for the defendants, including a copy of the terms of any refinancing to confirm that the defendants are unable to make payment as agreed in the parties' executed settlement agreement, but has received no response.

As Pierce cannot agree to voluntarily dismiss this action until the defendants confirm the terms of any refinancing, including any schedules regarding how the lending institution is directing that such funds are to be used, Pierce respectfully requests that this Court direct counsel for the defendants to provide such documentation to counsel for Pierce.

Moreover, as has been stated already **in writing** to counsel for the defendants, Pierce agrees to keep any financial information contained in such documents strictly confidential, and if the documents confirm that the terms of such refinancing preclude any payment to Pierce, Pierce will voluntarily dismiss this action without prejudice and allow the alternate settlement provision to operate as agreed.

Respectfully submitted
D.H. PIERCE DESIGN ASSOCIATES, INC.
By its attorneys,
MORRISON MAHONEY LLP

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